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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LUCILLE IRENE LEAGUE,

Defendant and Appellant.

H033739

(Santa Clara County
Super. Ct. No. 82442)

I. INTRODUCTION

In 1982, defendant Lucille Irene League, age 35, was convicted of second degree murder (Pen. Code, § 187)¹ after stabbing her mother to death. She was found not guilty by reason of insanity and committed to Patton State Hospital. By September 2008, defendant was participating in outpatient treatment through the South Bay Conditional Release Program (CONREP). In October 2008 her outpatient treatment supervisor made a written request to the superior court for revocation of outpatient status, pursuant to section 1608. After an evidentiary hearing, the court granted the request and on January 6, 2009, revoked defendant's outpatient status and recommitted her to the state hospital.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Defendant filed a notice of appeal from the trial court's order revoking her outpatient status and recommitting her to the state hospital, and we appointed counsel to represent her in this court. Appointed counsel has filed an opening brief that states the case and facts but raises no issue, and requests that this court review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We notified defendant of her right to submit written argument in her own behalf within 30 days and she has filed a timely supplemental brief. Having reviewed the entire record, we conclude that there is no arguable issue on appeal. Following the California Supreme Court's direction in *People v. Kelly* (2006) 40 Cal.4th 106, we provide a brief summary of the factual and procedural background of the case.

II. FACTUAL AND PROCEDURAL BACKGROUND

After a court trial, defendant was convicted on May 25, 1982, of murder in the second degree with a deadly weapon, a knife. (§§ 187, 12022, subd. (b).) On June 10, 1982, the trial court found that defendant was not guilty by reason of insanity. Pursuant to section 1026,² the court committed defendant to the state hospital for an indeterminate period of 16 years to life. She was admitted to Patton State Hospital in 1982, where she remained until 1988.

Thereafter, defendant alternated between inpatient and outpatient status. She was conditionally released to outpatient supervision on March 14, 1988. Her outpatient status was revoked on November 20, 1989, and she was admitted to Napa State Hospital. Nearly 13 years later, on September 17, 2002, defendant was again released to outpatient

² Section 1026 provides in pertinent part, "If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director, or the court may order the defendant placed on outpatient status"

status. She was returned to Napa State Hospital on September 29, 2003, and was released to outpatient status for a third time on February 17, 2004. Defendant remained an outpatient until March 2006, when she was again returned to Napa State Hospital. She was released to outpatient supervision by CONREP on December 6, 2006, but returned to the state hospital on May 22, 2008. She was released to outpatient supervision by CONREP on September 5, 2008. On October 21, 2008, defendant was rehospitalized.

On October 21, 2008, defendant's outpatient treatment supervisor and the community program director for CONREP submitted a written request to the superior court for revocation of defendant's outpatient status. A hearing on the request was set for December 11, 2008. Testimony was provided by Patricia Dolan, defendant's outpatient treatment supervisor at CONREP and a licensed marriage and family therapist; Gloria P. Andrews, a Grace Community Center rehabilitation specialist; and defendant.

Defendant, who has a diagnosis of schizoaffective disorder, has been Patricia Dolan's patient at CONREP since 2006. The basis for Dolan's request that defendant's outpatient status be revoked was defendant's behavior, starting in September 2008 when defendant told Dolan that she wanted to sue a doctor who had tried to murder her many years ago. Dolan was concerned that the "affective component" of her disorder was "still very active" and that she "could be getting into some delusional material." Defendant was also late to her treatment sessions with Dolan and gave the excuse that a stranger had reached into her purse and stolen exactly \$11.90. When Dolan attempted to discuss these matters, defendant became very angry, defensive and argumentative. Additionally, defendant's room and board manager informed Dolan that defendant "was responding to internal stimuli while sitting out on a porch alone," which indicated that defendant was having delusions or hallucinations although she had not reported these symptoms as required by CONREP. The room and board manager also told Dolan that defendant was not keeping her room neat, which could be an indication of internal disorganization.

Dolan was also concerned when defendant reported that her mother had been involved in an affair with her uncle and she had called her son to explain her crime, and then had become very upset when her son did not call her back. Further, defendant had stayed out past curfew without calling her board and care manager on two occasions, in violation of CONREP rules. Defendant also had asked to have her boyfriend move in with her, although he was believed to be an individual whom defendant was forbidden to see outside of Grace Community Center because he was involved in criminal activity. Dolan explained that defendant's impulsive decision making was a concern because she had a history of severe violence, which raised the issue of community safety. However, there was no history of defendant causing physical harm to others while she was on outpatient status.

Additionally, defendant had experienced a lack of bowel and bladder control and Dolan was concerned that "she was not paying attention to her own physical signals," which could be a sign of mental illness. Defendant had also intimidated a peer by demanding the telephone number of the peer's mother. Eventually, the board and care manager notified Dolan that defendant would no longer be allowed to reside in the home due to the number of problems and because defendant was not taking her medication. However, Dolan admitted that the only information she had received from the board and care home was that defendant had not been observed to take her medication, although the medication had disappeared.

Based on all of these concerns and problems, Dolan believed that defendant was no longer psychiatrically stable and could not abide by the terms and conditions of her conditional release, although she was oriented to person, place and time. Dolan also formed the opinion that defendant required extended inpatient treatment to "restabilize herself" because defendant was disorganized and very moody after only one month of outpatient treatment, and she appeared happier and better adjusted when she was in the hospital.

For those reasons, CONREP decided that defendant should be readmitted to Napa State Hospital and requested the revocation of her outpatient status. Since her admission to Napa State Hospital, defendant has been consistently argumentative, threatened other people, yelled at staff and refused to take Depakote, a psychotropic medication designed to stabilize the patient's mood. She had also called her former room and board manager multiple times in the belief that she has a special relationship with the manager's husband. Additionally, defendant was caught with a lighter, which is considered contraband since smoking is prohibited at Napa State Hospital.

Gloria P. Andrews testified that she was acquainted with defendant because she is an active member of the program at Grace Community Center where Andrews is employed as a rehabilitation therapist for the City of San Jose. During the past several years, Andrews has had one-on-one contact with defendant approximately three times per week. Defendant's demeanor was always polite and poised, and Andrews has never had "any negative situations with her." Defendant only become angry with men at the center who had behaved inappropriately. Andrews had never seen defendant "responding to internal stimuli." However, Andrews conceded that during the month before defendant was rehospitalized in October 2008 she had seen her less than once per week.

In her testimony, defendant asserted that she took her medication while in the board and care home, but she had refused to take the Depakote prescribed in the hospital due to the side effects. She is willing to take another mood stabilizer and is aware that she has a mental illness. While she admitted to having "tremendous mood swings," defendant denied that she is currently delusional. As to the room and board manager's report that she had been responding to internal stimuli, defendant explained that she was praying while alone in the backyard. As to the condition of her room at the board and care home, defendant stated that she is "naturally kind of a slob" and the room was too small to keep neat. Defendant also explained that she had violated curfew at the board and care home because she was being transported in a car by a person who did not bring

her back on time, although she did not think about calling to say she would be late. Additionally, her incontinence has a medical cause and was also due to the food at the board and care home being left out overnight. Her anger and mood swings are aggravated by the lack of freedom in her outpatient status at CONREP.

At the conclusion of testimony, the trial court determined that defendant's outpatient status should be revoked because she needed "a little more intense attention in a hospital setting," and ordered her to be transported back to Napa State Hospital "forthwith." A written order revoking defendant's outpatient's status pursuant to the request of CONREP, recommitting defendant to the state hospital, and reinstating the original commitment under section 1026, was filed on January 6, 2009. Defendant filed a notice of appeal on January 5, 2009.³

III. DISCUSSION

Appointed counsel has filed an opening brief that states the case and facts but raises no issue, and requests that this court review the entire record on appeal pursuant to *Wende, supra*, 25 Cal.3d 436. On May 6, 2009, defendant submitted a timely supplemental brief challenging the trial court's January 6, 2009 order revoking her outpatient status. In her supplemental brief, which consists of a handwritten letter, defendant challenges the order on the grounds that her counsel was ineffective (failure to subpoena unspecified witnesses and failure to prepare defendant to refute CONREP's showing), CONREP exaggerated defendant's behavior and their representative gave false

³ The notice of appeal was filed on January 5, 2009, one day before the written order revoking outpatient status was filed on January 6, 2009. The notice of appeal also states that the appeal is from the "judgment entered 12/11/08," which is the date of the hearing where the trial court issued the order from the bench. We will exercise our discretion to treat the notice of appeal as filed immediately after entry of the order. (Cal. Rules of Court, rule 8.104(e); *Jackson v. Fitzgibbons* (2005) 127 Cal.App.4th 329, 333, fn. 3 [construing former Cal. Rules of Court, rule 2(e)(2)].)

testimony, and it is not anyone's business whether she had internal stimuli because she was not behaving dangerously.

At the outset, we address the availability of *Wende* review for an order revoking outpatient status and recommitting the defendant to the state hospital pursuant to section 1608. Whether *Wende* review is available for a section 1608 order is a threshold issue that arises because the California Supreme Court ruled in *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535 (*Ben C.*) that neither “the federal or California Constitution requires *Anders* [(1967) 386 U.S. 738]/*Wende*[, *supra*, 25 Cal.3d 436] procedures in an appeal from the imposition of a conservatorship under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.).” The court also declined to extend the *Anders/Wende* procedures to conservatorship appeals under the court's inherent authority. (*Ibid.*) Following *Ben C.*, other appellate courts have determined that *Anders/Wende* procedures do not apply to appeals from different types of civil commitments. (*People v. Dobson* (2008) 161 Cal.App.4th 1422, 1425 [*Anders/Wende* procedures do not apply to an appeal from the denial of outpatient status under § 1026.2]; *People v. Taylor* (2008) 160 Cal.App.4th 304, 307 [appeal from civil commitments under the Mentally Disordered Offender Act exempt from *Anders/Wende* review].)

However, the California Supreme Court in *Ben C.* also instructed that appointed appellate counsel in a conservatorship appeal may file a brief that states there are no arguable issues and must provide the brief to the appellant, who must also be informed of the right to file a supplemental brief. (*Ben C.*, *supra*, 40 Cal.4th at p. 544.) The court further instructed that the appellate court may find it appropriate to retain the appeal, rather than dismiss on its own motion an appeal that raises no arguable issues. (*Id.* at p. 544, fn. 6.) Because the defendant in the present case has filed a supplemental brief challenging the revocation of her outpatient status and her recommitment to the state hospital, we find it appropriate to retain the appeal and to review the entire record to determine if there are any arguable issues.

In performing our review, we are mindful of the statutory procedures for revoking the outpatient status of a person found not guilty by reason of insanity and the applicable standard of review for the trial court's order revoking outpatient status.

Under section 1026, if the trier of fact “finds the defendant was insane at the time of the offense, the trial court shall commit the defendant to a state hospital or other appropriate public or private facility for the care and treatment of the mentally disordered, or place the defendant on outpatient status pursuant to section 1600 et seq. (§ 1026, subd. (a); [citations].)” (*People v. Dobson, supra*, 161 Cal.App.4th at p. 1431.) “Subsequent release from a state hospital after an insanity commitment occurs upon (1) restoration of sanity pursuant to section 1026.2, (2) expiration of the maximum term of commitment under section 1026.5, or (3) approval of outpatient status under section 1600 et seq. [Citation.]” (*People v. Cross* (2005) 127 Cal.App.4th 63, 72.)

“[A] defendant may be placed on outpatient status upon the recommendation of the state hospital director and the community program director with the court's approval after a hearing. (§ 1603; [citation].)” (*People v. Cross, supra*, 127 Cal.App.4th at p. 72.) “However, ‘ “[o]utpatient status is not a privilege given the [offender] to finish out his [or her] sentence in a less restricted setting; rather it is a discretionary form of treatment to be ordered by the committing court only if the medical experts who plan and provide treatment conclude that such treatment would benefit the [offender] and cause no undue hazard to the community.” [Citation.]’ [Citation.]” (*Ibid.*)

Section 1608 provides for the revocation of outpatient status: “If at any time during the outpatient period, the outpatient treatment supervisor is of the opinion that the person requires extended inpatient treatment or refuses to accept further outpatient treatment and supervision, the community program director shall notify the superior court . . . by means of a written request for revocation of outpatient status.” (§ 1608; *People v. DeGuzman* (1995) 33 Cal.App.4th 414, 419.) “The court must then hold a hearing and either grant or deny the request.” (*Ibid.*) Thus, the defendant is entitled to notice and a

hearing prior to the revocation of outpatient status. (*In re McPherson* (1985) 176 Cal.App.3d 332, 338.)

We review the trial court's order regarding outpatient status for an abuse of discretion. (*People v. Bartsch* (2008) 167 Cal.App.4th 896, 900.) "Under that standard, it is not sufficient to show facts affording an opportunity for a difference of opinion. [Citation.] . . . '[D]iscretion is abused only if the court exceeds the bounds of reason, all of the circumstances being considered. [Citation.]' [Citation.]" (*People v. Cross, supra*, 127 Cal.App.4th at p. 73.) Thus, an order revoking outpatient status will be reversed if it is not supported by substantial evidence. (*In re McPherson, supra*, 176 Cal.App.3d at pp. 341-342.)

Having carefully reviewed the entire record and defendant's supplemental brief, we conclude that there are no arguable issues on appeal. (*Wende, supra*, 25 Cal.3d at pp. 441-443.)

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

DUFFY, J.